

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PAUL A. LEE,

Petitioner,

v.

Civil Action No. 5:06CV161
Criminal No. 5:94CR96
(JUDGE STAMP)

UNITED STATES OF AMERICA,

Respondent.

**REPORT AND RECOMMENDATION THAT PETITION FOR
IMMEDIATE RELEASE UNDER 28 U.S.C. § 2255 BE DENIED
AND DENYING MOTION FOR ORDER TO SHOW CAUSE**

On December 22, 2006, the undersigned filed a Report and Recommendation and Hill v. Braxton notice that Petitioner's Petition for Immediate Release Under 28 U.S.C. § 2255 appeared to be untimely.

Petitioner was advised that unless he could demonstrate that he was entitled to have the statute of limitations equitably tolled or that his motion was timely filed it would be recommended his petition be dismissed as untimely.

Petitioner filed a response January 4, 2007 titled Petitioners § 2255 Should Not Be Filed Untimely.

Petitioner has failed to allege any extraordinary circumstances beyond his control which caused him to file the petition long after the expiration of the statute of limitation. Rouse v. Lee, 339 F.3d 238, 246 (4th Cir.) (en banc), cert. denied, 125 5Ct. 2009 (2004).

Accordingly, the undersigned recommends Petitioner's petition be dismissed.

On March 2, 2007, Petitioner filed a Motion for Order to Show Cause requiring the Government to respond to specific allegations of his § 2255 petition. Because this Report and Recommendation renders those allegations moot, motion **DENIED**.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court an original and two (2) copies of the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: March 7, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE